

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT R. PORTER,)
)
)
Plaintiff,)
)
)
v.) Civil Action No. 04-1736
)
) Judge Thomas M. Hardiman/
HARRY J. CANCELMI, Jr., Esq.,) Magistrate Judge Lisa
)
) Pupo Lenihan
Defendant.)
)

MEMORANDUM ORDER

Robert Porter had previously sought to pursue this civil rights action against Defendant Harry Cancelmi. He had requested leave to proceed in forma pauperis. The court previously denied him leave to do so based upon its conclusion that Plaintiff had acquired three strikes. Plaintiff appealed to the Court of Appeals which vacated and remanded the case to this court to for it to reassess Plaintiff's motion to proceed as a pauper. In the appeal, Plaintiff explained that he was not the Robert Porter who was identified in the report and recommendation as having filed Porter v. Montgomery County Correctional Facility, No. 00-2438 (3d Cir.) or Porter v. Montgomery County Correctional Facility, No. 00-CV-4258 (E.D. Pa.).

In light of his contentions, it does not appear that as of the filing of his IFP application originally in this court that he had three strikes and so, is not prohibited from proceeding IFP on that basis. Most recently, after the remand, Plaintiff filed another motion to proceed IFP. It is hereby ordered that the previous motion

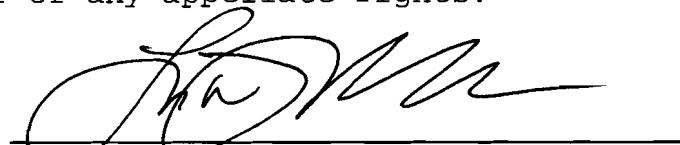
to proceed in forma pauperis, Doc. 1, is hereby **GRANTED**. The most recent IFP motion, Doc. 11, is hereby **DISMISSED** as moot.

However, the procedural posture of this case is unclear. Prior to the appeal, the docket shows an entry that Plaintiff filed a motion for leave to file an amended complaint. (See Docket at 12/17/04.) The record does not appear to contain an amended complaint, nor was the motion to amend ever ruled upon given that the court denied Plaintiff pauper status.

In order to rectify this situation, Plaintiff is hereby **ORDERED** to provide the court with the complaint that he wishes to have filed in this case by **December 31, 2005**. Failure to do so will result in the dismissal of this case for failure to prosecute. In addition, Plaintiff must provide instructions for where Defendant Cancelmi may be served.

CONCLUSION

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(A), and Local Rule 72.1.3, the parties are allowed ten (10) days from the date of service to file an appeal from this order to the District Court. Any opposing party shall have seven (7) days from the date of service of the appeal to respond thereto. Failure to timely file an appeal may constitute a waiver of any appellate rights.



Lisa Pupo Lenihan
United States Magistrate Judge

Dated: December 5, 2005

cc: Honorable Thomas J. Hardiman
United States District Judge

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